



ORIGINAL

LEVENTHAL SENTER & LERMAN PLLC

EX PARTE OR LATE FILED

September 30, 2003

S JENELL TRIGG  
OF COUNSEL  
(202) 416 1090

RECEIVED  
SEP 30 2003  
Federal Communications Commission  
Office of Secretary

E-MAIL  
STRIGG@LSL-LAW.COM

DIRECT FAX  
(202) 429-4636

**VIA COURIER**

Marlene H. Dortch, Esq  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Ex Parte Presentation Notice: ET Docket No. 00-258;  
WT Dockets No. 03-66, 02-68, and 02-55; MM Docket No. 97-217;  
and IB Docket No. 99-81**

---

Dear Ms. Dortch

On September 29 and 30, Billy J. Parrott, President and CEO of Private Networks, Inc. ("PNI"), James E. Lindstrom, President of Broadcast Data Corporation ("BDC"), and the undersigned, on behalf of the Ad Hoc MDS Alliance ("Ad Hoc"), met with R. Paul Margie of the Office of Commissioner Michael J. Copps and Samuel L. Feder of the Office of Commissioner Kevin J. Martin, and Commissioner Jonathan Adelstein and Barry J. Ohlson of his staff, respectively, regarding various proposals under consideration for relocating the Multipoint Distribution Service ("MDS") from the 2150-2162 MHz band.

Ad Hoc's presentations were consistent with its previous comments and ex parte submissions in the above-referenced dockets. Ad Hoc is a coalition of small and/or minority-owned MDS licensees including PNI and BDC. The record also indicates that The Wireless Communications Association International, Inc., Sprint, BellSouth, Cingular Wireless and MCI, in addition to dozens of other small MDS licensees and service providers that have significant interests in these proceedings are supportive of Ad Hoc's proposal regarding the 1.9 band.

Ad Hoc reiterated that the only equitable, reasonable, efficient and long-term solution to the forced relocation of MDS Channels 1 and 2 is relocation to 1910-1916/1990-1996 MHz. Such a move will impose minimum, if any, interference to various other spectrum users, and will provide expedited broadband services to the public given the ability of MDS to transition to the 1.9 band without delay. Moreover, the 1.9 band provides comparable spectrum for MDS to continue to provide two-way service, albeit at lower power levels in order to comport with the Commission's rules regarding interference in this band.

014



Ms. Marlene H. Dortch, Secretary  
September 30, 2003  
Page -2-

Ad Hoc is very concerned that the lobbying efforts of larger companies and organizations that are parties in interest in these multiple proceedings, with significantly greater financial, engineering and legal resources, have drowned out the voices and eclipsed the concerns of numerous small MDS licensees, many which have been pioneers in this service.

Ad Hoc respectfully requests that the FCC, consistent with its statutory obligations under Sections 309(j) and 257 of the Communications Act of 1934, as amended, and the Regulatory Flexibility Act, as amended, recognize and address the inherent nature and unique market entry barriers that small businesses in this band experience in order to continue as viable competitors – particularly those that participated in the FCC's auction process in good faith with certain expectations, a great commitment to providing service, and even greater financial liabilities.

Like most, if not all, licensees, the members of Ad Hoc have made significant investments in the purchase of spectrum (whether at comparative hearings, at auction or on the secondary market), construction of their networks, and fulfillment of lease obligations – all to bring service to the public in the most expedient and efficient manner given the changing dynamics of the wireless industry

However, unlike many licensees, a significant number of MDS licenses that are small business have had to endure several years of regulatory limbo, forcing delay or an abandonment of their plans for additional financial investments, network upgrades, and the ability to execute business strategy – through no fault of their own. Ad Hoc's principals pointed out the ironies in its visit to the FCC on Monday, that while the FCC's highly praised Federal Advisory Committee on Diversity in the Digital Age was taking its first steps in addressing market entry barriers for small and minority businesses in the telecommunications arena, at the same time incumbent small and minority owned MDS providers were addressing the possibility of regulatory decisions that will put them out of business – simply because they were located in the right place at the wrong time.

Continued delay and uncertainty will continue to impede or destroy Ad Hoc members' ability to meet current contractual obligations, which include long-term contracts with various service providers to lease MDS spectrum. Ad Hoc members have already lost any potential revenue upside that such contracts would have borne as they were structured to share in the risk of the service and not to extort large lease fees. Continued financial losses, whether due to continued regulatory uncertainty or an unfavorable decision by the FCC to move MDS Channels 1 and 2 to unsuitable spectrum or to a temporary home (such as 2165-2180 MHz), will seriously jeopardize the ability for MDS auction winners to meet their FCC installment payments and for all small MDS licensees to fulfill any other financial obligations related to system operations. For those small MDS licensees that successfully participated in the FCC's auction, the likelihood of default because of a forced relocation by the FCC would be most unfortunate as such an imposition would undermine the very principals of inclusiveness and the elimination of market entry barriers that support Sections 309(j) and 257.



Ms Marlene H Dortch, Secretary  
September 30, 2003  
Page -3-

When MDS' possible relocation was first announced to make way for 3G, Ad Hoc recognized that there was a strong public interest in providing viable spectrum for AWS and broadband, and therefore, in the spirit of cooperation and national interest, engaged its members and engineers to provide well-engineered, viable recommendations to the Commission for a new home for the service. Ad Hoc's proposal for the 19 band remains the best solution for a majority of interest holders in all of various dockets as it negates interference with numerous other bands/services, and assures an efficient transition to AWS – all in the public interest.

Therefore, Ad Hoc respectfully requests that the Commission act expeditiously and favorably on its proposals and grant relocation to 1910-1916/1990-1996 MHz

This notice is being filed in each of the above-referenced dockets. Please contact the undersigned if you have questions or comments.

Sincerely,

S. Jenell Trigg

*Counsel to Private Networks, Inc.*

cc: Commissioner Jonathan Adelstein  
Barry Ohlson  
Paul Margie  
Sam Feder  
Sheryl Wilkerson  
John Muleta  
Cathy Seidel  
Shellie Blakeney  
Jamison Prime  
Shameeka Hunt  
Trey Hanbury

#188513